

VZCZCXYZ0004
OO RUEHWEB

DE RUEHC #1158 1632125
ZNR UUUUU ZZH
O 122059Z JUN 09
FM SECSTATE WASHDC
TO AMEMBASSY KUALA LUMPUR IMMEDIATE 0000

UNCLAS STATE 061158

SIPDIS

E.O. 12958: N/A

TAGS: [KTIP](#) [ELAB](#) [KCRM](#) [KPAO](#) [KWMN](#) [PGOV](#) [PHUM](#) [PREL](#) [SMIG](#) [MY](#)
SUBJECT: MALAYSIA -- 2009 TIP REPORT: PRESS GUIDANCE AND
DEMARCHE

REF: A. (A) STATE 59732
 [B.](#) (B) STATE 005577

11. This is an action cable; see paras 5 through 7 and 10.

12. On June 16, 2009, at 10:00 a.m. EDT, the Secretary will release the 2009 Trafficking in Persons (TIP) Report at a press conference in the Department's press briefing room. This release will receive substantial coverage in domestic and foreign news outlets. Until the time of the Secretary's June 16 press conference, any public release of the Report or country narratives contained therein is prohibited.

13. The Department is hereby providing Post with advance press guidance to be used on June 16 or thereafter. Also provided is demarche language to be used in informing the Government of Malaysia of its tier ranking and the TIP Report's imminent release. The text of the TIP Report country narrative is provided, both for use in informing the Government of Malaysia and in any local media release by Post's public affairs section on June 16 or thereafter. Drawing on information provided below in paras 8 and 9, Post may provide the host government with the text of the TIP Report narrative no earlier than 1200 noon local time Monday June 15 for WHA, AF, EUR, and NEA countries and OOB local time Tuesday June 16 for SCA and EAP posts. Please note, however, that any public release of the Report's information should not/not precede the Secretary's release at 10:00 am EDT on June 16.

14. The entire TIP Report will be available on-line at www.state.gov/g/tip shortly after the Secretary's June 16 release. Hard copies of the Report will be pouched to posts in all countries appearing on the Report. The Secretary's statement at the June 16 press event, and the statement of and fielding of media questions by G/TIP's Director and Senior Advisor to the Secretary, Ambassador-at-Large Luis CdeBaca, will be available on the Department's website shortly after the June 16 event. Ambassador de Baca will also hold a general briefing for officials of foreign embassies in Washington DC on June 17 at 3:30 pm EDT.

15. Action Request: No earlier than 12 noon local time on Monday June 15 for WHA, AF, EUR, and NEA posts and OOB local time on Tuesday June 16 for SCA and EAP posts, please inform the appropriate official in the Government of Malaysia of the June 16 release of the 2009 TIP Report, drawing on the points in para 9 (at Post's discretion) and including the text of the country narrative provided in para 8. For countries where the State Department has lowered the tier ranking, it is particularly important to advise governments prior to the Report being released in Washington on June 16.

16. Action Request continued: Please note that, for those countries which will not receive an "action plan" with specific recommendations for improvement, posts should draw host governments' attention to the areas for improvement identified in the 2009 Report, especially highlighted in the "Recommendations" section of the second paragraph of the narrative text. This engagement is important to establishing the framework in which the government's performance will be

judged for the 2010 Report. If posts have questions about which governments will receive an action plan, or how they may follow up on the recommendations in the 2009 Report, please contact G/TIP and the appropriate regional bureau.

¶7. Action Request continued: On June 16, please be prepared to answer media inquiries on the Report's release using the press guidance provided in para 11. If Post wishes, a local press statement may be released on or after 10:30 am EDT June 16, drawing on the press guidance and the text of the TIP Report's country narrative provided in para 8.

¶8. Begin Final Text of Malaysia's country narrative in the 2009 TIP Report:

MALAYSIA (TIER 3)

Malaysia is a destination and, to a lesser extent, a source and transit country for women and children trafficked for the purpose of commercial sexual exploitation and for men, women, and children trafficked for the purpose of forced labor. Malaysia is mainly a destination country for men, women, and children who migrate willingly from Indonesia, Nepal, Thailand, the People's Republic of China (PRC), the Philippines, Burma, Cambodia, Bangladesh, Pakistan, India, and Vietnam for work) usually legal, contractual labor) and are subsequently subjected to conditions of involuntary servitude in the domestic, agricultural, food service, construction, plantation, industrial, and fisheries sectors. Some foreign women and girls are also victims of commercial sexual exploitation. Some migrant workers are victimized by their employers, employment agents, or traffickers who supply migrant laborers and victims of sex trafficking. Some victims suffer conditions including physical and sexual abuse, forced drug use, debt bondage, non-payment of wages, threats, confinement, and withholding of travel documents to restrict their freedom of movement. Some female migrants from Indonesia, Thailand, the Philippines, Cambodia, Vietnam, Burma, Mongolia, and the PRC are forced into prostitution after being lured to Malaysia with promises of legitimate employment. Individual employment agents, which are sometimes used as fronts for human trafficking, sold women and girls into brothels, karaoke bars, or passed them to sex traffickers. There were reports of Malaysians, specifically women and girls from indigenous groups and rural areas, trafficked within the country for labor and commercial sexual exploitation. Burmese migrants, including some Burmese registered with the United Nations as refugees, a legal status not recognized by the Malaysian government, are trafficked for forced labor. To a lesser extent, some Malaysian women, primarily of Chinese ethnicity and from indigenous groups and rural areas, are trafficked abroad to destinations including Singapore, Hong Kong, France, and the United Kingdom, for commercial sexual exploitation.

There were a number of credible reports of Malaysian immigration authorities, involvement in the trafficking of Burmese refugees from immigration detention centers to the Thai-Malaysian border. Several credible sources reported that immigration officials sold refugees for approximately \$200 per person to traffickers operating along Thailand's southern border. In turn, the traffickers demanded ransom) ranging from \$300 for children to \$575 for adults) in exchange for their freedom. Informed sources estimated 20 percent of the victims were unable to pay the ransom, and were sold for the purpose of labor and commercial sexual exploitation. The Malaysian and Indonesian governments did not amend or replace a 2006 Memorandum of Understanding (MOU) between the two countries covering the employment of Indonesian women as domestic servants in Malaysia. The MOU authorizes Malaysian employers to confiscate and hold the passport of the domestic employee throughout the term of employment. Although the MOU stated that domestic workers should be paid directly and be given time off in lieu of overtime, it remained common practice for employers to deposit wages with recruiting agencies as repayment for debts. NGOs reported that many Indonesian household workers

were required to work 14 to 18 hours a day, seven days a week.

The Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so, despite some progress in enforcing the country's new anti-trafficking law. While the government took initial actions under the anti-trafficking law against sex trafficking, it has yet to fully address trafficking in persons issues, particularly labor trafficking in Malaysia. Credible allegations, including those released in an April 2009 formal report by the U.S. Senate Foreign Relations Committee, of involvement of Malaysian immigration officials in trafficking and extorting Burmese refugees overshadowed initial steps by the Immigration Department to address human trafficking. The Royal Malaysian Police is investigating the allegations with the cooperation of the Immigration Department, as publicly confirmed by the Prime Minister, but no officials were arrested, prosecuted, or convicted for involvement in trafficking during the reporting period. The government did not develop mechanisms to screen effectively victims of trafficking in vulnerable groups. The government also continued to allow for the confiscation of passports by employers of migrant workers (a common practice in Malaysia. This practice is recognized by many in the international anti-trafficking community as facilitating trafficking. The practice of withholding the salaries of foreign domestic workers for three to six months so the employer can recover the levy paid to hire the worker remained widely practiced. As a regional economic leader approaching developed nation status, Malaysia has the resources and government infrastructure to do more in addressing trafficking in persons.

Recommendations for Malaysia: Fully implement and enforce the comprehensive anti-trafficking in persons law; increase the number of prosecutions, convictions, and sentences for both sex and labor trafficking; adopt and disseminate proactive procedures to identify victims of trafficking among vulnerable groups such as migrant workers and foreign women and children arrested for prostitution; apply stringent criminal penalties to those involved in fraudulent labor recruitment or exploitation or forced labor; ensure that victims of trafficking are not threatened or otherwise punished for crimes committed as a result of being trafficked; re-examine existing MOUs with source countries to incorporate victim protection and revoke passport or travel document confiscation; increase efforts to prosecute and convict public officials who profit from or are involved in trafficking; expand the training of law enforcement, immigration, prosecutors, and judges on the use of the 2007 trafficking law; implement and support a comprehensive and visible anti-trafficking awareness campaign directed at employers and clients of the sex trade; and increase efforts to prosecute and convict public officials who profit from, or are involved in trafficking, or who exploit victims.

Prosecution

The Government of Malaysia made some progress in investigating sex trafficking offenses and punishing trafficking offenders during the reporting period, but has not demonstrated efforts to investigate, prosecute, or convict offenders of labor trafficking. Malaysian law prohibits all forms of human trafficking through its July 2007 comprehensive anti-trafficking law, which prescribes penalties that are commensurate with those prescribed for other grave offenses, such as rape. In December 2008, the government convicted its first trafficking offender under the 2007 anti-trafficking law; an Indian national convicted of forcing a female domestic worker into prostitution was sentenced to eight years in prison. The government also initiated prosecutions against an additional six alleged traffickers, one of whom fled while on bail. Although there were credible reports of government officials, direct involvement in human trafficking, none were arrested, prosecuted, or punished for trafficking. The Prime Minister and Inspector General of Police reported that the government

is actively investigating the allegations. In July 2008, the Director-General of Immigration and his Deputy Director-General were arrested for graft and corruption involving the acceptance of bribes for issuance of visas and visitation passes. Informed observers speculate this corruption facilitated trafficking in persons. There were reports of a significant number of migrant laborers trafficked to Malaysia and widespread media reporting of the trafficking conditions many of these workers face. The government did not report any criminal prosecutions of employers who subjected workers to conditions of forced labor or labor recruiters who used deceptive practices and debt bondage to compel migrant workers into involuntary servitude.

During the reporting period, there were several NGO and media reports of groups of foreign workers subjected to conditions of forced labor in Malaysia. In August 2008, following an investigative news report, more than 1,000 foreign workers at a Malaysian factory producing apparel for a U.S. company were found subjected to squalid living conditions, confiscation of their passports, withheld wages, and exploitative wage deductions) conditions indicative of forced labor.

Following its own investigation, the U.S. company stated that it found major labor violations committed by the local factory, though a Malaysian government official reportedly responded by saying that the local factory,s management did not breach any labor laws. Moreover, the Malaysian government did not respond with a criminal investigation of the allegations.

In February 2009, a Malaysian newspaper revealed a case of 140 Bangladeshi workers locked in a small apartment. The workers each reportedly paid recruiters \$5,000 to \$13,000 to find them jobs in Malaysia; however, the recruiters passed the workers to a Malaysian employment agency, which upon their arrival in Malaysia, confiscated their passports and work permits and did not pay their wages for three to six months in most cases, although some individuals were not paid in more than a year. The Malaysian government is investigating the case as a labor dispute rather than a human trafficking case. In 2008, a local NGO coordinated with police in Sarawak to rescue 17 male Cambodians forced to work on commercial fishing boats and repatriated them to Cambodia.

The government did not prosecute any employers who confiscated passports of migrant workers or confined them to the workplace. Some employers who hired foreign migrant workers held the wages of their employees in escrow, until completion of a contract.

Protection

While Malaysia showed modest efforts to protect victims of sex trafficking during the reporting period, its efforts to protect victims of labor trafficking remained inadequate. Numerous source country governments of migrant workers in Malaysia expressed concern about the lack of legal protections in place for foreign workers, particularly those subjected to involuntary servitude. There was no widespread effort by the Government of Malaysia to identify trafficking victims among vulnerable migrant groups, such as girls and women detained for involvement in prostitution or the thousands of undocumented migrant workers rounded up by RELA, a government-sponsored public security auxiliary force. As a result, some unidentified victims, including children, detained by immigration authorities were routinely processed as illegal migrants and held in prisons or illegal migrant detention facilities prior to deportation. In some cases, especially those involving deportation over land borders, this made victims vulnerable to being re-trafficked by traffickers operating at the borders such as along the Malaysian-Indonesian border on Borneo. Police reported rescuing about 2,000 foreign women and minors forced into prostitution during raids on brothels in 2008. The government deported or voluntarily repatriated most of the victims to their home countries, referring some to their respective embassy shelters and processing a limited number as victims under the anti-trafficking law. The Ministry for Women, Family, and Community Development continued to run two

trafficking shelters, which held suspected and confirmed trafficking victims until they were repatriated to their home countries. In 2008, the Ministry renovated a third shelter in the East Malaysian state of Sabah. In 2008, the police referred 98 potential trafficking victims to the government shelters in Kuala Lumpur, 34 of which were certified by magistrates as officially recognized trafficking victims. Police also referred hundreds of suspected trafficking victims to local and diplomatic missions operating victims, shelters; the government cooperated with the embassies, repatriation of victims, but did not offer other assistance. Foreign migrant laborers, legal and illegal, lacked regular access to legal counsel in cases of contract violations and abuse, although in a small percentage of cases workers filed complaints under the labor laws. Some suspected trafficking victims continued to be housed at immigration detention centers pending repatriation. The government offered no facilities for male trafficking victims. While victims may file a civil suit against exploiters under Malaysian law, they are unable to work while their suit is being considered, thus discouraging such attempts at restitution. Immigration authorities did not screen foreign women arrested for prostitution for identification as trafficking victims, but instead processed them for quick deportation. The government does not provide legal alternatives to the removal of victims to countries where they may face hardship or retribution.

Prevention

Malaysia made limited efforts to prevent trafficking in persons over the last year. Senior officials, including the Prime Minister, Inspector General of Police, and the Minister for Women, Family, and Community Development, spoke out more routinely against trafficking crimes, and the government-influenced media carried numerous reports that raised awareness of trafficking. The Women's Ministry developed information brochures on trafficking in English and Malay for NGOs to distribute to the public, and started a women's hotline for victims of trafficking. The government condoned the confiscation of passports by employers. Employers passed the government's immigration levy⁸ on to the low-skilled workers, which facilitated debt bondage. There were no visible measures taken by the government to reduce the demand for forced labor or for commercial sex acts. Protection officers from the Women's Ministry received specialized training on assisting victims. The government provided anti-trafficking training through its Peacekeeping Training Center at Port Dickson to troops preparing to deploy to international peacekeeping missions. The government has not ratified the 2000 UN TIP Protocol.

¶9. Post may wish to deliver the following points, which offer technical and legal background on the TIP Report process, to the host government as a non-paper with the above TIP Report country narrative:

(begin non-paper)

-- The U.S. Congress, through its passage of the 2000 Trafficking Victims Protection Act, as amended (TVPA), requires the Secretary of State to submit an annual Report to Congress. The goal of this Report is to stimulate action and create partnerships around the world in the fight against modern-day slavery. The USG approach to combating human trafficking follows the TVPA and the standards set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (commonly known as the "Palermo Protocol"). The TVPA and the Palermo Protocol recognize that this is a crime in which the victims, labor or services (including in the "sex industry") are obtained or maintained through force, fraud, or coercion, whether overt or through psychological manipulation. While much attention has focused on international flows, both the TVPA and the Palermo Protocol focus on the exploitation of the victim, and do not require a showing that the victim was moved.

-- Recent amendments to the TVPA removed the requirement that only countries with a "significant number" of trafficking victims be included in the Report. Beginning with the 2009 TIP Report, countries determined to be a country of origin, transit, or destination for victims of severe forms of trafficking are included in the Report and assigned to one of three tiers. Countries assessed as meeting the "minimum standards for the elimination of severe forms of trafficking" set forth in the TVPA are classified as Tier 1. Countries assessed as not fully complying with the minimum standards, but making significant efforts to meet those minimum standards are classified as Tier 2. Countries assessed as neither complying with the minimum standards nor making significant efforts to do so are classified as Tier 3.

-- The TVPA also requires the Secretary of State to provide a "Special Watch List" to Congress later in the year. Anti-trafficking efforts of the countries on this list are to be evaluated again in an Interim Assessment that the Secretary of State must provide to Congress by February 1 of each year. Countries are included on the "Special Watch List" if they move up in "tier" rankings in the annual TIP Report -- from 3 to 2 or from 2 to 1) or if they have been placed on the Tier 2 Watch List.

-- Tier 2 Watch List consists of Tier 2 countries determined: (1) not to have made "increasing efforts" to combat human trafficking over the past year; (2) to be making significant efforts based on commitments of anti-trafficking reforms over the next year, or (3) to have a very significant number of trafficking victims or a significantly increasing victim population. As indicated in reftel B, the TVPRA of 2008 contains a provision requiring that a country that has been included on Tier 2 Watch List for two consecutive years after the date of enactment of the TVPRA of 2008 be ranked as Tier 13. Thus, any automatic downgrade to Tier 3 pursuant to this provision would take place, at the earliest, in the 2011 TIP Report (i.e., a country would have to be ranked Tier 2 Watch List in the 2009 and 2010 Reports before being subject to Tier 3 in the 2011 Report). The new law allows for a waiver of this provision for up to two additional years upon a determination by the President that the country has developed and devoted sufficient resources to a written plan to make significant efforts to bring itself into compliance with the minimum standards.

-- Countries classified as Tier 3 may be subject to statutory restrictions for the subsequent fiscal year on non-humanitarian and non-trade-related foreign assistance and, in some circumstances, withholding of funding for participation by government officials or employees in educational and cultural exchange programs. In addition, the President could instruct the U.S. executive directors to international financial institutions to oppose loans or other utilization of funds (other than for humanitarian, trade-related or certain types of development assistance) with respect to countries on Tier 3. Countries classified as Tier 3 that take strong action within 90 days of the Report's release to show significant efforts against trafficking in persons, and thereby warrant a reassessment of their Tier classification, would avoid such sanctions. Guidelines for such actions are in the DOS-crafted action plans to be shared by Posts with host governments.

-- The 2009 TIP Report, issuing as it does in the midst of the global financial crisis, highlights high levels of trafficking for forced labor in many parts of the world and systemic contributing factors to this phenomenon: fraudulent recruitment practices and excessive recruiting fees in workers, home countries; the lack of adequate labor protections in both sending and receiving countries; and the flawed design of some destination countries, "sponsorship systems" that do not give foreign workers adequate legal recourse when faced with conditions of forced labor. As the May 2009 ILO Global Report on Forced Labor concluded, forced labor victims suffer approximately \$20 billion in losses, and traffickers, profits are estimated at \$31 billion. The current global financial crisis threatens to increase the

number of victims of forced labor and increase the associated "cost of coercion."

-- The text of the TVPA and amendments can be found on website www.state.gov/g/tip.

-- On June 16, 2009, the Secretary of State will release the ninth annual TIP Report in a public event at the State Department. We are providing you an advance copy of your country's narrative in that report. Please keep this information embargoed until 10:00 am Washington DC time June 16. The State Department will also hold a general briefing for officials of foreign embassies in Washington DC on June 17 at 3:30 pm EDT.

(end non-paper)

110. Posts should make sure that the relevant country narrative is readily available on or though the Mission's web page in English and appropriate local language(s) as soon as possible after the TIP Report is released. Funding for translation costs will be handled as it was for the Human Rights Report. Posts needing financial assistance for translation costs should contact their regional bureau's EX office.

111. The following is press guidance provided for Post to use with local media.

Q1: Why was Malaysia downgraded to Tier 3 in the 2009 TIP Report?

A: The Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so, despite progress in enforcing the country's new anti-trafficking law. While the government took initial actions under the anti-trafficking law against sex trafficking, it has yet to fully address trafficking in persons issues, particularly labor trafficking in Malaysia. Credible allegations of involvement of Malaysian immigration officials in trafficking and extorting Burmese refugees overshadowed initial steps by the Immigration Department to address human trafficking. The Royal Malaysian Police is investigating the allegations with the cooperation of the Immigration Department, as publicly confirmed by the Prime Minister but no officials were arrested, prosecuted, or convicted for involvement in trafficking during the reporting period. The government did not develop mechanisms to screen effectively victims of trafficking in vulnerable groups. The government also continued to allow for the confiscation of passports by employers of migrant workers (a common practice in Malaysia. This practice is recognized by many in the international anti-trafficking community as facilitating trafficking. The practice of withholding the salaries of foreign domestic workers for three to six months so the employer can recover the levy paid to hire the worker remained widely practiced. As a regional economic leader approaching developed nation status, Malaysia has the resources and government infrastructure to do more in addressing trafficking in persons.

Q2: Was the Malaysian Government complicit in human trafficking during the reporting period?

A: There were a number of credible reports of Malaysian immigration authorities, involvement in the trafficking of Burmese refugees from immigration detention centers to the Thai-Malaysian border. This includes a detailed report issued by the U.S. Senate Foreign Relations Committee in April 2009. Several credible sources reported that immigration officials sold refugees for approximately \$200 per person to traffickers operating along Thailand's southern border. In turn, the traffickers demanded ransom (ranging from \$300 for children to \$575 for adults) in exchange for their freedom. Informed sources estimated 20 percent of the victims were unable to pay the ransom, and were sold for the purpose of labor and commercial sexual

exploitation. Despite these credible reports of government officials, direct involvement in human trafficking, none were arrested, prosecuted, or punished for trafficking. The Prime Minister and Inspector General of Police reported that the government is actively investigating the allegations.

Q3: What progress has Malaysia made in the past year?

A: In December 2008, the government convicted its first trafficking offender under the 2007 anti-trafficking law. The government also initiated prosecutions against an additional six alleged traffickers. The Ministry for Women, Family, and Community Development continued to run two trafficking shelters, which held suspected and confirmed trafficking victims until they were repatriated to their home countries. In 2008, the Ministry renovated a third shelter in the East Malaysian state of Sabah. In 2008, the police referred 98 potential trafficking victims to the government shelter in Kuala Lumpur, 34 of which were certified by magistrates as officially recognized trafficking victims. Senior officials, including the Prime Minister, Inspector General of Police, and the Minister for Women, Family, and Community Development, spoke out more routinely against trafficking crimes, and the government-influenced media carried numerous reports that raised awareness of trafficking.

Q4: What efforts could Malaysia make to improve its fight against trafficking in persons?

A: The Malaysian government could: fully implement and enforce the comprehensive anti-trafficking in persons law; increase the number of prosecutions, convictions, and sentences for both sex and labor trafficking; adopt and disseminate proactive procedures to identify victims of trafficking among vulnerable groups such as migrant workers and foreign women and children arrested for prostitution; apply stringent criminal penalties to those involved in fraudulent labor recruitment or exploitation or forced labor; ensure that victims of trafficking are not threatened or otherwise punished for crimes committed as a result of being trafficked; re-examine existing MOUs with source countries to incorporate victim protection and revoke passport or travel document confiscation; increase efforts to prosecute and convict public officials who profit from or are involved in trafficking; expand the training of law enforcement, immigration, prosecutors, and judges on the use of the 2007 trafficking law; implement and support a comprehensive and visible anti-trafficking awareness campaign directed at employers and clients of the sex trade; increase efforts to prosecute and convict public officials who profit from, or are involved in trafficking, or who exploit victims.

¶12. 2009 TIP Report Hero from Malaysia

Alice Nah is a founding member of the Migration Working Group, a network of lawyers, academics, and volunteers focused on caring for, protecting, and defending the rights of refugees and migrant workers who are especially vulnerable to becoming victims of forced labor. Through the network, Ms. Nah urges law enforcement agencies to identify and protect refugees and migrant workers who become trafficking victims. She raises government and public awareness through online articles describing the plight of trafficking victims, refugees, and migrant workers. In January 2009, Ms. Nah wrote about the trafficking of Burmese refugees along the Malaysia-Thailand border. Her article increased local and international attention to the issue and raised public awareness within Malaysia.

¶13. The Department appreciates posts, assistance with the preceding action requests.

CLINTON